

The opinion in support of the decision being  
entered today is not binding precedent of the Board.

Filed by: Trial Section Merits Panel  
Mail Stop INTERFERENCE  
Board of Patent Appeals and Interferences, USPTO  
P. O. Box 1450  
Alexandria, Virginia 22313-1450  
Tel: 703-308-9797 Fax: 703-305-0942

Paper No. 21

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

RODNEY KERN, DAVE LEPPERT,  
PETER SCHULTE, JAMES SCHWINGLE  
and DEAN SHANAHAN  
Junior Party  
(Patent 6,330,763)<sup>1</sup>

v.

WALENTY KALEMPA  
and BRIAN NORBERT DRIFKA  
Senior Party  
(Application 10/039,381)<sup>2</sup>

---

Patent Interference No. 105,151

---

Before LEE, LANE, and MEDLEY, Administrative Patent Judges.

LEE, Administrative Patent Judge.

**Judgment – Rule 662**

---

<sup>1</sup> Based on Application 09/394,796, filed September 10, 1999. The real party in interest is Rite-Hite Holding Corporation.

<sup>2</sup> Filed January 3, 2002. Accorded the benefit of Application 09/333,732, filed June 15, 1999; and Application 60/090,487, filed June 24, 1998. The real party in interest is Rytec Corporation.

Interference No. 105,151  
Kern v. Kalempa

On May 4, 2004, junior party Kern filed a request for entry of adverse judgment. (Paper No. 20). The request is granted. It is

**ORDERED** that judgment as to the subject matter of Count 1 is herein entered against junior party RODNEY KERN, DAVE LEPPERT, PETER SCHULTE, JAMES SCHWINGLE and DEAN SHANAHAN;

**FURTHER ORDERED** that junior party RODNEY KERN, DAVE LEPPERT, PETER SCHULTE, JAMES SCHWINGLE and DEAN SHANAHAN is not entitled to its patent claim 1 which corresponds to Count 1;

**FURTHER ORDERED** that senior party's preliminary motion 1 to add a claim to its involved application and to designate the same as corresponding to Count 1 is dismissed as moot;

**FURTHER ORDERED** that if there is a settlement agreement, the parties should note the requirements of 35 U.S.C. § 135(c) and 37 CFR § 1.666;

**FURTHER ORDERED** that a copy of this judgment be filed in the respective involved application or patent of the parties; and

**FURTHER ORDERED** that upon resumption of prosecution of its involved application before the examiner, senior party Kalempa shall immediately submit to the examiner a copy of junior party Kern's request for entry of adverse judgment, inclusive of all attachments thereto, and specifically direct the examiner's attention to the discussion of potentially applicable prior art on page 2 thereof.

Interference No. 105,151  
Kern v. Kalempa

_____	)	
Jameson Lee	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
_____	)	BOARD OF PATENT
Sally Gardner Lane	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
	)	
_____	)	
Sally C. Medley	)	
Administrative Patent Judge	)	

Interference No. 105,151  
Kern v. Kalempa

By Facsimile:

Attorney for senior party Kalempa:

Michael D. Lake, Esq.  
Wallenstein Wagner & Rockey, Ltd.  
311 South Wacker Drive  
53<sup>rd</sup> Floor  
Chicago, Illinois 60606-6630  
312-554-3301 (Fax)

Attorney for junior party Kern:

Michael R. Weiner, Esq.  
MARSHALL, GERSTEIN & BORUN LLP  
6300 Sears Tower  
233 S. Wacker Drive  
Chicago, Illinois 60606  
312-474-0448 (Fax)